IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1092 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MOHANBHAI DAJIBHAI PATEL & 3 - Opponent(s)

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Appearance :
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
MR JB PARDIWALA for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. By way of this appeal, the appellant – State challenges the judgment and order passed by learned Judicial Magistrate, First Class, Pardi, in Criminal

Case No.2985 of 1990 dated 31st May, 1995, whereby the respondents were acquitted of the offences under Sections 325, 323, 337, 451, 504 and 114 of Indian Penal Code alleged against them.

2. The prosecution case, in short, was that the complainant, his father, his mother, his brother and Nilesh went to his vadi at Dungri village on 16.5.1990 where the accused came with sticks, iron rods and gun and caused injuries to the complainant, his brother, his father and his mother. Thereafter, they ran away from the said place and went to the hospital for taking treatment and then filed the complaint at Pardi police station against the accused. After completion of investigation, the charge sheet came to be filed against the accused under Sections 325, 323, 337, 451, 504 and 114 of I.P.C.

3. To prove the case against the accused, the prosecution examined in all nine witnesses: P.W.1 Shailesh Kumar Mohanbhai Patel Exh.17, P.W.2 Mohanbhai Lallubhai Patel Exh.19, P.W.3 Kailashben Mohanbhai Exh.28, P.W.4 Nileshkumar Mohanbhai Exh.29, P.w.5 Balubhai Harjibhai Exh.30, P.W.6 Paragbhai Naranbhai Exh.32, P.W.7 Dr.Mustaq Ahmed Mehbubbhai Qureshi, Exh.36, P.W.8 Jayantibhai Gopalbhai Solanki Exh.41, P.W.9 Ratan Narayan Exh.59. After recording necessary evidence, learned Magistrate acquitted the respondents of the offences with which they were charged. Hence, the present appeal.

4. Mr. S.P. Hasurkar, learned APP, appearing for

the appellant submitted that the accused have attacked armed with the weapons like gun, stick and iron rod and they have beaten the complainant and the witnesses and thereby they have committed the offence under Sections 325, 323, 337, 451, 504 and 114 of I.P.C.. It is submitted by Mr.Hasurkar that without considering the evidence on record, the trial court has acquitted the accused. Thus, it is submitted that the impugned order is illegal and requires to be quashed and set aside.

5. Learned Advocate for the respondents submitted that the incident was the result of scuffle and injuries sustained by the complainant and the witnesses are possible because of falling down and, therefore, the trial court has rightly given the benefit of doubt to the accused and has not committed any error in passing the judgment and order in question.

6. Having heard the learned advocates for the parties and having perused the record, it appears that the trial Court has appreciated the evidence and has come to the conclusion that there was civil dispute between the parties and that the prosecution has not examined the independent witnesses. It can also be seen that the doctor in his cross-examination has admitted that the injuries sustained by the complainant and the witnesses are also possible because of falling down and in that view of the matter, the trial Court has rightly given the benefit of doubt.

7. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

8. In the case of State of Uttar Pradesh V/s Ram

Veer Singh & Ors., reported in 2007 AIR SCW 5553 wherein in para 9, the Apex Court held as under:

> “9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh and Ors. V. State of Madhya Pradesh (2002(2) Supreme 567). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. V.State of Maharashtra (AIR 1973 SC 2622); Ramesh Babulal Doshi V.State of Gujarat (1996(4) Supreme 167); Jaswant Singh V.State of Haryana (2000(3) Supreme 320); Raj

> Kishore Jha V. State of Bihar and Ors. (2003(7) Supreme 152); State of Punjab V. Karnail Singh (2003(5) Supreme 508); State of Punjab V.Pohla Singh and Anr. (2003 (7) Supreme 17) and V.N.Ratheesh V. State of Kerala (2006 (10) SCC 617).

9.1. Further, there is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record.

9.2. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

10. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed.

[K.S. JHAVERI, J.]

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